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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,043	10/24/2003	H. Charles Li	14698.005US	1547

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,043

Applicant(s)

LI ET AL

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6, 9-15, 17 and 19-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 9-15, 17 and 19-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The drawings are objected to because "axis A" is missing from Fig. 6 (pg. 10 ln. 6).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "showers" and "water filtering system" set forth in claims 6 and 15 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing

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figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "feed water inlet" set forth in claims 1, 17 and 19, "structured to hold the elongated member" language set forth in claims 1, 9, 17 and 19, and "attachment means" and "internal structure" set forth in claim 20, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at page 14 of the response filed April 19, 2005 the term "attachment means" is defined at page 9, line 1 through page 10, line 3. However, the examiner has again reviewed the noted portions of the specification, but the "attachment means", as set forth in claim 20, is not consistent therewith. Applicant further argues at page 14 of the response the term "internal structure" is defined at page 6, lines 8-15 and at page 7, line 18 through page 8, line 11. However, the

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examiner has again reviewed the noted portions of the specification, but the "internal structure" described therein is not commensurate in scope with the term as set forth in claim 20. Applicant did not address the remaining terminology noted.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3, 5, 6, 17, 19-23 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

The Johnson reference discloses a water structure device comprising: an elongated member 32 including a first chamber 64, a second chamber 67, a feed water inlet (at 34), a divider 58,60 including distribution slots 52, and a waterfall slot 36; a first end piece 34 including a channel/internal structure (Fig.

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5); a water source 30; a second end piece 34; a supporting structure 10; and attachment means (Figs. 2 and 3), as claimed. Re claim 1, elements 42 and 44 are capable of being used as a handle in the functionally recited manner.

Applicant argues at pages 16-17 of the response Johnson does not disclose end pieces as defined in claims 1, 17 and 19. The examiner can not agree. The end pieces 34 (Fig. 2) in Johnson are attached to pipes 30 which are in turn attached to elements 12-28 of the water structure. Since elements 42,44 in Johnson are capable of being used as a handle when the end pieces are so attached, the broad claim language is met by Johnson.

5. Claims 1-3, 5, 6, 9-15, 17 and 19-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Chartier.

The Chartier reference discloses a water structure device comprising: an elongated member 34 including a first chamber (defined by 32), a second chamber 33, a feed water inlet (at 31), a divider 32 including distribution slots 44, and a waterfall slot 47; a first end piece 28 including a channel/internal structure (col. 3 lns. 36-37); a water source 16; a second end piece 29; a supporting structure 62; and attachment means (Fig. 1), as claimed. Re claim 1, element 49 is capable of being used as a handle in the functionally recited

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manner, especially considering the embodiments disclosed at column 5, lines 49-55. Re claim 9, the end pieces 28,29 are circular and therefore are capable of rotation in the functionally recited manner.

Applicant argues at pages 18-20 of the response Chartier does not disclose end pieces as defined in claims 1, 9, 17 and 19. The examiner can not agree. The end pieces 28,29 in Chartier are attached to pipes 26,27 which are in turn attached to elements of the water structure (sentence bridging cols. 2 and 3). Since element 49 in Chartier is capable of being used as a handle (at least by inserting fingers between surfaces 51,52) when the end pieces are so attached, the broad claim language is met by Chartier. Applicant argues at page 20 of the response Chartier does not disclose a device that is rotatable as recited in claim 9. The examiner can not agree. The end pieces 28,29 in Chartier are rotatable (i.e. able to be rotated) in the same sense as with applicant's invention as disclosed at page 12, lines 3-9. The broad claim language is met by Chartier.

6. Claims 1-3, 5, 6, 31, 32, 17, 19-23 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Gable.

The Gable reference discloses a water structure device comprising: an elongated member 10 including a first chamber

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(upstream of 22), a second chamber (downstream of 22), a feed water inlet 18, a divider 22 including distribution slots 23, and a waterfall slot 12; a first end piece 20 including a channel/internal structure (Fig. 5) and attachment means 21; a water source 4,5; and a second end piece 20 including attachment means 21, as claimed. Re claim 1, element 12 is capable of being used as a handle in the functionally recited manner.

7. Claims 1-3, 5, 6, 17, 19-23 and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson and Bishop.

Although the elongated member of the Johnson water structure device is not disclosed as being used as a handle, attention is directed to the Bishop reference which discloses an analogous water structure device which further includes an elongated member 20 disclosed as being used as a handle (col. 1 lns. 37-45). Therefore, in consideration of Bishop, it would have been obvious to one of ordinary skill in the water structure device art to associate handle usage spacing with the Johnson elongated member in order to enable use as a handle.

8. Claims 1-3, 5, 6, 9-15, 17 and 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chartier and Bishop.

To associate handle usage spacing with the Chartier elongated member would have been obvious to one of ordinary

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skill in the art in consideration of Bishop analogous to the discussion supra.

Re claim 9, although the elongated member of the Chartier water structure device is not disclosed as being rotated, as claimed, attention is again directed to the Bishop reference which discloses an analogous water structure device which further includes an elongated member 20 disclosed as being rotated (col. 1 lns. 48-54). Therefore, in further consideration of Bishop, it would have been obvious to one of ordinary skill in the water structure device art to associate rotation with the Chartier elongated member in order to facilitate day/night use.

9. Claims 1-3, 5, 6, 31, 32, 17, 19-23 and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gable and Kohler.

Although the attachment means of the Gable water structure device does not engage a sidewall, as disclosed, attention is directed to the Kohler reference which discloses an analogous water structure device which further includes attachment means 9,12 engaging a sidewall 11. Therefore, in consideration of Kohler, it would have been obvious to one of ordinary skill in the water structure device art to associate sidewall engagement with the Gable attachment means in order to reduce noise.

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10. Applicant's remarks have been fully considered and have been previously addressed.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", with a stylized flourish at the end.

Robert M. Fetsuga
Primary Examiner
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